

The opinion in support of the decision being entered today is not binding precedent of the Board.

Paper 1

Filed by: Fred E. McKelvey  
Senior Administrative Patent Judge  
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Filed  
11 May 2001

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

W. FRENCH ANDERSON, R. MICHAEL BLAESE  
and STEVEN A. ROSENBERG,

Junior Party,  
(Patent 5,399,346),

v.

RICHARD SELDEN,  
Senior Party  
(Application 08/465,582),

Patent Interference 104,710 (McK)

MAILED

MAY 11 2001

PAT. & TM. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

**NOTICE DECLARING INTERFERENCE<sup>1</sup>**  
(37 CFR § 1.611)

**Part A. Declaration of interference**

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties.

Details of the application, patent, count and claims designated as corresponding or as not corresponding to the counts appear in Parts E and F of this NOTICE DECLARING INTERFERENCE.

*This interference is one of six interferences which replaces now administratively terminated Interference 103,708. No paper*

<sup>1</sup> This NOTICE DECLARING INTERFERENCE is a modified version of the NOTICE generally used by the Trial Section (i.e., DECLARE.007, Revised September, 2000). Material added to DECLARE.007 appears in *italics*.

filed, or evidence submitted, in Interference 103,708 is deemed to be of record in this interference. The six interferences are:

- (1) Interference 104,710, Anderson v. Selden.
- (2) Interference 104,711, Anderson v. Eppstein.
- (3) Interference 104,712, Anderson v. Morgan.
- (4) Interference 104,713, Selden v. Eppstein.
- (5) Interference 104,714, Selden v. Morgan.
- (6) Interference 104,715, Eppstein v. Morgan.

Times for taking action during the preliminary motion and priority testimony phase of all six interferences will be set to run concurrently. The Trial Section intends to decide preliminary motions at the same time.

**Part B. Judge designated to handle the interference**

Senior Administrative Patent Judge Fred E. McKelvey has been designated to handle the interference. 37 CFR § 1.610(a).

**Part C. Standing order**

A Trial Section STANDING ORDER accompanies this NOTICE DECLARING INTERFERENCE. The STANDING ORDER applies to this interference.

**Part D. Conference call to set dates**

A telephone conference call to set dates for taking action in the interference is scheduled for 12:30 p.m. (1230 hours Eastern Daylight Time) on Friday, 15 June 2001 (the call will be initiated from the PTO). The conference call will involve all counsel in all six interferences.

No later than **two business days** prior to the conference call, each party shall file and serve by facsimile a list of the preliminary motions the party intends to file. See § 17 of the STANDING ORDER.

A copy of a "sample" order setting times for taking action during the preliminary motion phase of the interference accompanies this NOTICE DECLARING INTERFERENCE.

Counsel are encouraged to discuss the order prior to the conference call with the view to coming to some mutual agreement as to dates for taking action. A typical preliminary motion period lasts approximately nine (9) months. Counsel should be prepared to justify any request for a shorter or longer period.

**Part E. The parties involved in this interference are:**

Junior Party

Named inventors: W. French Anderson  
R. Michael Blaese  
Steven A. Rosenberg

Patent: U.S. Patent 5,399,346,  
granted 21 March 1995,  
based on application 08/220,175,  
filed 30 March 1994

Title: Gene therapy

Assignee: United States of America as  
represented by the Department  
of Health and Human Services;  
licensee Genetic Therapy, Inc.

Accorded Benefit: Application 07/904,662,  
filed 8 September 1992

Application 07/868,794,  
filed 15 April 1992

Application 07/807,446,  
filed 13 December 1991<sup>2</sup>

Attorneys: See last page

Address: See last page

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<sup>2</sup> Application 07/807,446, filed 13 December 1991, is said to be continuation-in-part of application 07/365,567, filed 14 June 1989. In view of representations made by Anderson in Interference 103,708, Anderson is not being accorded benefit for the purpose of priority of application 07/365,567.

Senior Party

Named Inventors: Richard F. Selden

Application: Application 08/465,582,  
filed 5 June 1995

Title: Transkaryotic implantation

Assignee: Transkaryotic Therapies, Inc.

Accorded Benefit: Application 08/312,444,  
filed 26 September 1994

Application 08/180,701,  
filed 13 January 1994

Application 07/918,927,  
filed 22 July 1992

Application 07/787,760,  
filed 6 November 1991

Application 07/044,719,  
filed 1 May 1987

Attorneys: See last page

Address: See last page

**Part F. Count and claims of the parties**

Count 1

A method according to claim 1 of Anderson,  
or  
a method according to claim 36 of Selden.

The claims of the parties are:

Anderson:	1-14
Selden:	36

The claims of the parties which correspond to Count 1 are:

Anderson:	1-14
Selden:	36

The claims of the parties which do not correspond to  
Count 1, and therefore are not involved in the interference, are:

Anderson:	None
Selden:	None

**Part G. Heading to be used on papers**

The following heading shall be used on papers filed in the interference. See § 18 of the STANDING ORDER.

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Paper \_\_\_\_<sup>3</sup>

Filed on behalf of [name of party]  
By: Name of lead counsel, Esq.  
Name of backup counsel, Esq.  
Street address  
City, State, and Zip-Code  
Tel:  
Fax:

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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**W. FRENCH ANDERSON, R. MICHAEL BLAESE  
and STEVEN A. ROSENBERG,**

Junior Party,  
(Patent 5,399,346),

v.

**RICHARD SELDEN,**

Senior Party  
(Application 08/465,582),

Patent Interference 104,710 (McK)

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**TITLE OF PAPER**

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<sup>3</sup> Leave a blank line because the board assigns the paper number.

**Part H. Summary of dates for taking action**

Times for taking action are set out in the following sections of the STANDING ORDER:

1. § 7: date for identifying lead and backup counsel.
2. § 8: date for identifying any real party in interest.
3. § 9: date for requesting copies of involved and benefit applications and patents.
4. § 17: date for filing list of proposed preliminary motions.
5. § 19: date for accomplishing certain discovery.
6. § 20: date for filing clean copy of claims.
7. § 21: date for filing clean copy of claims in cases with drawings and/or claims containing a means plus function limitation.
8. § 23: dates for filing oppositions to Rule 635 miscellaneous motions and dates for filing replies to oppositions.
9. § 33: date for objecting to admissibility of evidence.
10. § 34: date for serving supplemental affidavits or evidence to respond to objection to admissibility of evidence.
11. § 35: dates when cross-examination can take place.
12. § 45: dates for taking action with respect to settlement discussions



**Part I. Order form for requesting file copies**

*It is believed that the parties should have copies of all relevant involved and benefit files. If not, the following form is to be used to order a copy of a file. While it is not clear why, please be advised that (1) not all involved and benefit files mentioned in Interference 103,708 are physically located at the board and (2) there may be a delay in filling orders for those files. Accordingly, a party shall produce a copy of a file in its possession upon request by an opponent.*

**FILE COPY REQUEST**

**Interference 104,710 (McK)**

A copy of Part E of this NOTICE DECLARING INTERFERENCE should be attached to this FILE COPY REQUEST, with a circle by hand around the patents and applications for which a copy of a file wrapper is desired.

To facilitate processing of this FILE COPY REQUEST, the following information should be included:

1. Charge fees to USPTO Deposit Account No. \_\_\_\_\_
2. Complete address, including street, city, state, zip code and telephone number (do not list a Post Office box inasmuch as file copies are sent via commercial overnight courier).

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Telephone, including area code: \_\_\_\_\_

Part J. Signature of administrative patent judge

*mgk*

Fred E. McKelvey  
Senior Administrative Patent Judge

11 May 2001  
Arlington, VA

Enc:

Copy of STANDING ORDER

Copy of order used for setting times for taking action in  
the preliminary motion phase of the interference (ORDERPM6)

Copy of order used for setting times for taking action in  
the testimony and briefing phases of the interference  
(ORDERTE6)

There is no PTO Form 850

DECLARE.007  
Revised September, 2000  
(replaces DECLARE.006.1)

104,710

cc (via Federal Express):

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(real party in interest  
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represented by the Department  
of Health and Human Services;  
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(real party in interest  
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## INTERFERENCE DIGEST

Interference No. 104,710

Paper No. 21

Name: W. French Anderson et al.

Serial No.: 08/220,175

Patent No. 5,399,346

Title: Gene therapy

Filed: 03/30/94; granted 03/21/95

Interference with Selden

### DECISION ON MOTIONS

Administrative Patent Judge, \_\_\_\_\_ Dated, \_\_\_\_\_

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### FINAL DECISION

Board of Patent Appeals and Interferences, \_\_\_\_\_ Dated, \_\_\_\_\_

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Court, \_\_\_\_\_ Dated, \_\_\_\_\_

### REMARKS

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This should be placed in each application or patent involved in interference in addition to the interference letters.